Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of T-Mobile License LLC Spectrum Manager Lease Arrangements	File Nos. 0009021213 & 0009021220

REPLY IN SUPPORT OF PETITION FOR RECONSIDERATION

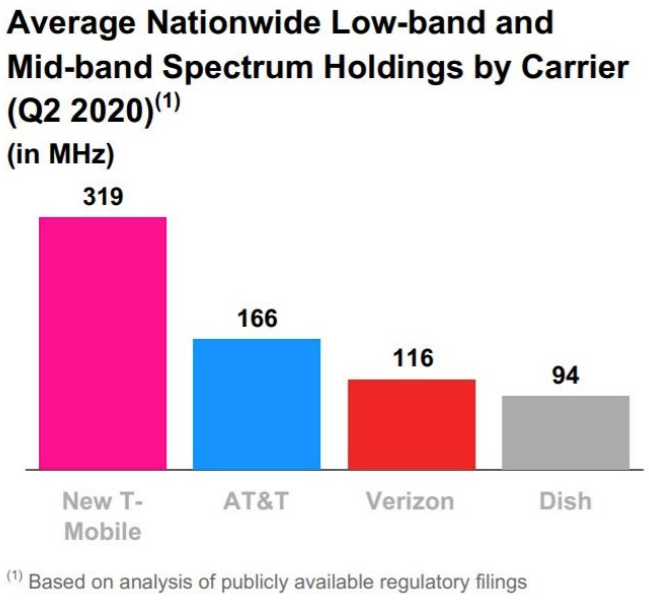
In June 2020, T-Mobile's President of Technology, Neville Ray, boasted that, *before* the challenged lease arrangements take effect, T-Mobile's low- and mid-band spectrum holdings give it such a "material advantage" in the marketplace that its "competition doesn't have a path to match [it] for some time."[1] Indeed, Mr. Ray claimed that T-Mobile has a "2x" or "3x multiple" in the "mid- and low-bands" over AT&T and Verizon — a lead that he claims increases to "a 5, maybe even a 6 multiple" in terms of "applying that spectrum for the customer[s'] use."[2] T-Mobile cannot avoid its own candid acknowledgements that there are significant competitive concerns that will follow from allowing T-Mobile to expand on its already significant lead in mid- and low-band spectrum — or that at least must be seriously considered by the Commission if its spectrum screen is to retain any meaning — and in its response to the petition, it does not even address them.

In addition, earlier this month, T-Mobile's U.S. CEO Mike Sievert bragged that "T-Mobile is pulling way ahead [of] AT&T and Verizon," "is miles ahead of both of them," and "is

[1] T-Mobile US, Inc. Company Conference Presentation (June 18, 2020) (statements of Neville Ray, President of Technology, T-Mobile) ("T-Mobile Market Presentation"), https://metroconnections-1.wistia.com/medias/mr80m9n4to.

[2] *Id.*

demonstrably ahead of the competition even as we just start pouring on the gas."[3] Indeed, Mr. Sievert agrees that T-Mobile "controls . . . . more" low- and mid-band spectrum on average nationwide "than AT&T and Verizon combined."[4] And while T-Mobile disparages the spectrum holdings charts Verizon included in its petition for reconsideration, T-Mobile's own calculations have it even *further* ahead of its competitors than Verizon's data.[5]



T-Mobile asserts — without data or addressing the merits — that these lease arrangements will have no competitive harms. But, again, T-Mobile says nothing about its own repeated public statements that admit the competitive consequences of allowing it to expand on its massive mid- and low-band spectrum lead without scrutiny. That is because there is nothing to be said: when one company is already "miles ahead" of its competitors — and believes those competitors do

[3] Sean Kinney, *T-Mobile US CEO: On 5G, We're 'Miles Ahead' of AT&T and Verizon*, RCRWirelessNews (Aug. 7, 2020), https://bit.ly/348GtGo.

[4] Mike Dano, *Verizon Keeps Snapping Up Spectrum and Small Carriers*, LightReading (Aug. 7, 2020), https://bit.ly/31YluDs.

[5] *Compare* Supercharging the Un-Carrier, Investor Factbook Q2 2020 at 15, https://bit.ly/3kPVvXz, *with* Verizon Pet. at 7 (calculating T-Mobile holdings of 311 MHz, as compared to 176 MHz for AT&T and 117 MHz for Verizon).

not "have a path to match" it — allowing that company to *increase* its lead even further facially raises competitive concerns that, at a minimum, must be substantively reviewed.

Unable to dispute its executive leadership's own, candid assessment, T-Mobile resorts to a series of baseless procedural gripes. For the reasons Verizon identified in its petition and has discussed in this reply, the Commission should grant reconsideration, subject the arrangements to a searching competitive analysis, and reject the arrangements where it finds competitive harms or require T-Mobile to take action to mitigate those harms, including spectrum divestitures.

First, T-Mobile suggests (at 2) that the "sole factual basis" presented for reconsideration is that T-Mobile exceeds the spectrum screen, and notes — correctly — that exceeding the spectrum screen is not, itself, evidence of competitive harm. While T-Mobile is correct about the spectrum screen, it is wrong about the "sole factual basis" for Verizon's petition. The real competitive concerns arise from T-Mobile's acknowledged — *and now increasing* — lead in mid-and low-band spectrum over its nearest competitors, both nationwide and in the most populated Partial Economic Areas (PEAs) in which T-Mobile is obtaining even more spectrum through these arrangements. That T-Mobile has previously been allowed to exceed the spectrum screen in a specific instance does not insulate it from review of the competitive consequences of subsequent increases. As shown above, T-Mobile ignores its own executives' statements about that lead. And T-Mobile also ignores the Bureau's prior conclusion that allowing a carrier with "at least double" the spectrum of its rivals to add more spectrum "could result in competitive harms," which should be ameliorated through spectrum divestitures.[6]

[6] Memorandum Opinion and Order, *SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, 31 FCC Rcd 3631, ¶¶ 24, 26 (Wireless Telecomms. Bur. and Int'l Bur. 2016).

Second, T-Mobile contends (at 2-4) that its notifications "contained extensive disclosures on spectrum aggregation and discussions of competition" and the Bureau therefore must already have done a sufficient competitive review. But that misunderstands the Commission's process for the consideration of spectrum manager leasing arrangements. The rule governing the notification and acceptance process makes no mention of a review for competitive harms — much less a searching competitive analysis — as a pre-condition for the Commission's acceptance of such arrangements.[7] Instead, the Commission "retains the right to investigate and terminate" an arrangement, "if it determines, post-notification, that the arrangement . . . raises . . . competitive . . . concerns."[8]

T-Mobile's disclosures are thus just the first step. Verizon has now presented the Commission with additional evidence from which the Commission can — and should — make that determination. And that determination should consider T-Mobile's own conclusions from that evidence. As it recently told investors: its "total spectrum position . . . is more than AT&T and Verizon combined"; its "mid-band spectrum position . . . is nearly three times that of AT&T and nearly four times that of Verizon"; in the "mmWave bands, T-Mobile controls . . . [the] second most in the industry"; and — in sum — that T-Mobile has "an *advantaged* spectrum position across multiple spectrum bands."[9]

Third, T-Mobile asserts (at 4) that Verizon cannot petition for reconsideration because it failed to comment earlier. T-Mobile is wrong on the facts and the law. T-Mobile relies on a June 17, 2020 Public Notice, which described these arrangements as "De Facto Transfer Lease

[7] *See* 47 C.F.R. § 1.9020(e).

[8] *Id.* § 1.9020(g).

[9] Investor Factbook Q2 2020 at 15 (emphasis added).

Arrangements," and set a 14-day response period, consistent with § 1.9030(e)(1)(iii), which requires petitions to deny such arrangements to be filed within 14 days of public notice.[10] But, of course, these are spectrum manager lease arrangements subject to § 1.9020. And the Bureau recognized its error the following week, issuing a correction explaining that these spectrum manager lease arrangements "appeared on last week's Accepted for Filing Public Notice *in error*."[11] Therefore, T-Mobile is wrong on the facts in claiming that there was a 14-day period — from June 17 through July 1 — in which Verizon either had the opportunity or was required to respond.

T-Mobile is equally wrong on the law. Section 1.9020(e) does not allow for an adversarial proceeding before spectrum manager lease arrangements are accepted. Instead, it expressly provides that, "once accepted," spectrum manager lease arrangements "will be placed on an informational public notice" and then are "subject to reconsideration."[12] Reconsideration is thus the first opportunity for a non-party to participate in a proceeding involving spectrum manager lease arrangements. The informational public notice under § 1.9020(e) was issued on July 15, 2020.[13] Verizon timely filed for reconsideration on August 7, 2020.[14] And the Commission's own regulations — which Verizon cited in the opening lines of its petition — provide the "good reason why it was not possible" for Verizon to participate earlier.[15]

[10] *See* Public Notice, Report No. 15074 at 5 (June 17, 2020) (providing notice of these arrangements as "De Facto Transfer Lease Applications").

[11] Public Notice, Report No. 15082, at 5 (June 24, 2020) (emphasis added).

[12] 47 C.F.R. § 1.9020(e)(1)(iii), (e)(2)(iv).

[13] *See* Public Notice, Report No. 15137, at 19 (July 15, 2020).

[14] *See* 47 C.F.R. § 1.106(f).

[15] *Id.* § 1.106(b)(1).

For these reasons, and those in Verizon's petition, the Commission should grant reconsideration and should subject the Spectrum Manager Lease arrangements to its competitive analysis. Where the Commission concludes that the arrangements are likely to cause competitive harms — and, as Verizon has shown, there is a high likelihood of such harms — the Commission should reject or terminate the arrangements, or require T-Mobile to take action to mitigate those harms, including requiring spectrum divestitures. At a minimum, the facts surrounding these leases warrant a searching competitive review that has not yet taken place.

Respectfully submitted,

/s/

Tamara L. Preiss
Katharine R. Saunders
VERIZON
1300 I Street, NW, Suite 500E
Washington, DC 20005
(202) 515-2540

Attorneys for Verizon

William H. Johnson
Of Counsel

August 24, 2020

Certificate of Service

I, Sarah Trosch, hereby certify that on this 24th day of August, a copy of the foregoing "Reply in Support of Petition for Reconsideration" in ULS File Nos. 0009021213 and 0009021220 were sent by electronic mail to the following parties:

Trey Hanbury
trey.hanbury@hoganlovells.com
Counsel for Channel 51 License Co LLC
and LB License Co, LLC

Doane Kiechel
doane@kiechellaw.com
Counsel for T-Mobile License LLC

Nancy Victory
nancy.victory@dlapiper.com
Counsel for T-Mobile License LLC